

### **Remarks**

Claims 1, 3, and 4 have been amended without any intention of disclaiming equivalents thereof. Claims 14 and 30-67 have been cancelled without prejudice to their subsequent reintroduction into this application or their introduction into a related application. Upon entry of this paper, claims 1-13, and 15-29 will be pending and under consideration.

Support for the claim amendments appears throughout Applicants' application and parent application, U.S. Patent Application Serial No. 09/255,294, as filed ("Applicants' parent application," copy enclosed for the convenience of the Examiner). For example, support for the amendments to claim 1 appears, for example, at the paragraph bridging pages 3-4 and in the first full paragraph of page 5 of Applicants' parent application, as filed. Support for the amendments to claim 3 appears, for example, in the paragraph bridging pages 7-8 of Applicants' parent application, as filed. Claim 4 has been amended to be consistent with the amendments to claim 1.

Applicants believe that the aforesaid amendments to the claims introduce no new matter. The outstanding rejections are addressed in the order in which they appear in the Office Action.

### ***Rejections under 35 USC § 112, Second Paragraph***

According to page 2 of the outstanding Office Action, claims 1, 5-9, 10, 14, 17, 19, 20, 23, 26 and 28 presently stand as rejected under 35 U.S.C. § 112, Second Paragraph. The Office Action alleges that the algorithms for "using the data from the consumers to negotiate a price," as recited in claim 1, step d, is "vague and indefinite as to how the information is transformed into a price." Office Action, Page 2.

Without acquiescing to this rejection but in order to promote prosecution, Applicants have amended steps b and d of claim 1 to require that the data received from consumers comprises bids and that the consumer bids are used to negotiate a price on behalf of the virtual collective. This is further described in the first full paragraph of page 5 of Applicants' parent application. Examples of the process appear throughout Applicants' application and parent application and figures, as filed. Accordingly, in view of this amendment, Applicants respectfully request that this rejection be reconsidered and withdrawn.

***Rejections Under 35 U.S.C. § 102(e)***

According to pages 2-3 of the outstanding Office Action, claims 1, 5, 9, 10, 14, and 19 presently stand rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 7,146,330 by Alon et al. (“Alon”). Applicants respectfully traverse this rejection in view of the present amendments and following remarks.

*1. Alon fails to teach or suggest limitations of Applicants’ claims, as amended*

Applicants respectfully submit that neither Alon nor Alon’s priority document, U.S. Provisional Patent Application No. 60/119,220 filed on February 8, 1999 (“Alon’s priority document,” copy enclosed for the convenience of the Examiner) teach or suggest each and every element of Applicants’ claims, as amended. For example, Applicants’ independent claim 1 requires, in step b, receiving from consumers interested in purchasing the product, data comprising bids, and in step d, using the bids from the consumers to negotiate a price on behalf of the virtual collective.

Applicants respectfully submit that the methods described in Alon fail to teach or suggest bids from the consumers, or using consumers’ bids to negotiate a price on behalf of the virtual collective. Rather, Alon describes sellers who submit bids and buyers (i.e. consumers) who submit requests, not bids. As described in Alon, “[e]mbodiments of the invention support the interactive negotiation with a vendor or multiple vendors by the apparatus or group members, during which process both the group commitment escalates and the vendor’s bid for the groups purchase improves.” See Alon column 4, lines 12-15, or Alon’s priority document, page 3, first paragraph.

It is Alon’s vendors/sellers, not the buyers, who submit suggested price quotes or bids for the transaction. See Alon or Alon’s priority document, claim 1 and Figures 3-5. As shown in Figures 4 and 5, vendors submit bids and are informed of the status of their bids, while buyer group members are notified of the vendor bids. Accordingly, since both Alon and Alon’s priority document fail to teach or suggest that bids are generated from the consumers, or that the consumers’ bids are used to negotiate a price on behalf of the virtual collective, as required by Applicants’ claim 1 and all pending claims by dependency, as amended, Applicants respectfully request that this rejection be reconsidered and withdrawn.

*2. Alon is not prior art to Applicants' application*

In addition, Applicants respectfully submit that Alon is not prior art under 35 U.S.C. § 102. Specifically, as stated in MPEP 706.02 (f) (1), Example 2:

For reference publications and patents of patent applications filed under 35 U.S.C. 111 (a), the prior art dates under 35 U.S.C. 102 (e) accorded to these references are the earliest effective U.S. filing dates. Thus, a publication and patent of a 35 U.S.C. 111 (a) application, which claims \* > benefit < under 35 U.S.C. 119 (e) to a prior U.S. provisional application . . . , would be accorded the earlier filing date as its prior art date under 35 U.S.C. 102 (e), assuming the earlier-filed application has proper support for the subject matter as required by 35 U.S.C. 119 (e) . . . .

Of course, 35 USC 119(e) states, in pertinent part, that:

An application for patent filed under section 111(a) . . . of this title for an invention disclosed in the manner provided by the first paragraph of section 112 of this title in a provisional application . . . , shall have the same effect, as to such invention, as though filed on the date of the provisional application . . . .

The first paragraph of section 112 requires that the invention be described and enabled. Accordingly a provisional application which does not describe and enable an invention claimed in a 111(a) utility application claiming its benefit does not support the claimed invention. The 111(a) application accordingly is not entitled to the filing date of the provisional, and the 111(a) application when published or issued is available as a 102 (e) reference only as of its actual filing date.

Multiple express limitations in each of Alon's independent claims (1, 12, 18, 22, 31, 47, 61 and 62), and claims depending therefrom, are not described in Alon's priority document and accordingly are not supported by Alon's priority document as required by 35 U.S.C. § 119(e) and 35 U.S.C. § 112 first paragraph. Because none of Alon's claims are supported by Alon's priority document, the priority date properly accorded Alon is its nonprovisional filing date of February 3, 2000, and in compliance with established precedent, the 102 (e) date of Alon is also February 3, 2000. This date is nearly one year later than Applicants' priority date of February 22, 1999.

Each of Alon's independent claims 1, 12, 18, 31, 47, and 62 requires an "agent entity". For example, Alon's claim 1 includes the steps of:

- receiving by an agent entity a suggested price quotation for the product/service from the a plurality of the sellers;
- automatically providing by the agent entity each received suggested price quotation to at least a plurality of the sellers for review, wherein the agent entity is an agent of the group of buyers; and
- receiving by the agent entity another suggested price quotation for the product/service from at least one of the plurality of sellers. Alon, claim 1.

However, Alon's priority document is devoid of the term or teaching of the concept of an "agent entity." Rather, this term was first introduced into Alon's nonprovisional patent application, filed February 3, 2000. Accordingly, since at least this limitation of independent claims 1, 12, 18, 31, 47 and 62, and claims depending therefrom, is not described in Alon's priority document, the priority date for these claims is no earlier than Alon's actual filing date, February 3, 2000, nearly one year later than Applicants' priority date.

Alon's independent claims 22 and 61, and claims depending therefrom, also are not supported by Alon's priority document. Specifically, Alon's claim 22 requires, in part, the step of:

- verifying that each prospective buyer satisfies a requirements list before including the prospective buyer in a buying group, the requirements list including a requirement that a plurality of buyers in the group have a common employer, wherein the common employer is independent of the seller.

Similarly, Alon's claim 61 requires, in part, the step of:

- verifying that each prospective buyer satisfies a requirements list before including the prospective buyer in a buying group, the requirements list including a requirement that a plurality of buyers in the group share a common characteristic associated with a third party that is not any of the buyers or the seller.

However, Alon's priority document fails to describe any such verification. At most, Alon's priority document indicates that, "[a] company intranet for example can provide private groups for its employees." Alon's priority document, paragraph bridging pages 3-4. Therefore, since at least these limitations of independent claims 22 and 61, and claims depending therefrom, are not described in Alon's priority document, the priority date for these claims also is no earlier than Alon's actual filing date, February 3, 2000, nearly one year later than Applicants' priority date.

Because none of Alon's independent claims 1, 12, 18, 22, 31, 47, 61 and 62, and claims depending therefrom, are supported by Alon's priority document under 35 U.S.C. § 112, first paragraph, Applicants respectfully submit that the priority date for Alon is the actual filing date of Alon's nonprovisional application, February 3, 2000.

Applicants also respectfully submit that their claims, as amended, in sharp contrast to the Alon claims, are properly supported by Applicants' parent application in compliance with 35 U.S.C. § 112, first paragraph, and that Applicants' application is entitled to the benefit of the filing date of Applicants' parent application, filed February 22, 1999. Accordingly, the critical 102(e) reference date of Alon post-dates the effective filing date of Applicants' application and does not qualify as prior art under 35 U.S.C. § 102. Therefore, Applicants respectfully request that this rejection be reconsidered and withdrawn.

### ***Rejections Under 35 U.S.C. § 103***

According to page 3 of the outstanding Office Action, claims 17, 20, 23, and 26 presently stand rejected under 35 U.S.C. § 103 as being obvious over Alon. Applicants respectfully submit that, as described above, Alon fails to teach or suggest at least receiving from consumers interested in purchasing the product data comprising bids and using the bids from the consumers to negotiate a price on behalf of the virtual collective, as required by each of claims 17, 20, 23, and 26, by dependency. Moreover, any reference relied upon for rejection under 35 U.S.C. § 103, must qualify as prior art under 35 U.S.C. § 102. *See, e.g., Panduit Corp. v. Dennison Mfg. Co.*, 810 F.2d 1561, 1568, 1 USPQ2d 1593, 1597 (Fed. Cir. 1987) ("Before answering *Graham's* 'content' inquiry, it must be known whether a patent or publication is in the prior art under 35 U.S.C. § 102.") However, for the reasons described above, Alon is not prior art under any section of 35 U.S.C. § 102. Thus, Alon fails as a reference under 35 U.S.C. § 103. Accordingly, Applicants respectfully request that this rejection be reconsidered and withdrawn.


**Conclusion**

Applicants believe that, in the view of the above amendments and comments, the pending claims are in condition for allowance. Early favorable action is respectfully solicited. The Office is invited to contact the undersigned with any questions about this submission.

Respectfully submitted,

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